

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

JOHN CHRISTMAS

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CRIMINAL NO. 04-CR-611-3

MEMORANDUM AND ORDER

Kauffman, J.

March 28, 2005

On February 2, 2005, a grand jury returned a fifty-five-count Superseding Indictment in the above-captioned case charging seven defendants with various criminal activities, including violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and related offenses. John Christmas ("Defendant") was named in Counts 3-6 and 46-48 of the Superseding Indictment, which charge conspiracy to commit mail fraud, mail fraud, perjury before the grand jury, and false statements to the FBI. Now before this Court is Defendant's Motion for Severance. For the reasons that follow, this Motion will be denied.

I. Background

Defendant is charged in seven counts of the Superseding Indictment. The primary defendants in the case are charged in over thirty counts with various offenses including violations of RICO, RICO conspiracy, mail fraud, wire fraud, bank fraud, and Hobbs Act extortion. Defendant has moved to sever his trial because he is not alleged to have conspired with many of the other co-defendants and because he is not charged under RICO. Although Defendant is not named in the RICO counts, the charges against him form the basis of the first RICO predicate act, an alleged scheme to defraud the City of Philadelphia by making false representations in

order to obtain a professional services contract for Keystone Information and Financial Services and improperly gain a commission for tax collection services.

II. Legal Standard

While there is a clear preference in the federal system for the joint trial of defendants who are indicted together, a court may sever if a joint trial “appears to prejudice a defendant or the government.” Fed. R. Crim. P. 14(a). Severance should be granted “only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” Zafiro v. United States, 506 U.S. 534, 539 (1993); see also United States v. Davis, 397 F.3d 173, 182 (3d Cir. 2005). A defendant bears the burden of establishing that severance is necessary. United States v. Sandini, 888 F.2d 300, 305 (3d Cir. 1989).

III. Discussion

In determining if severance would be appropriate, a court must balance the public interest in joint trials against the possibility of prejudice. See United States v. Eufrasio, 935 F.2d 553, 568 (3d Cir. 1991). Defendant cannot identify a specific trial right that would be burdened by a joint trial. Instead, he argues that severance is necessary to avoid prejudice stemming from “spill-over” and jury confusion, given the number of defendants in this case, and because he is not charged in the RICO counts.¹ The mere fact that there is more evidence against a co-defendant, or that a co-defendant is more culpable, is generally not sufficient to compel severance. See Eufrasio, 935 F.2d at 568; United States v. DiPasquale, 740 F.2d 1282, 1293 (3d Cir. 1984). Nor is it sufficient that severance might increase a defendant’s likelihood of

¹ Defendant does not argue misjoinder under Federal Rule of Criminal Procedure 8.

acquittal. See United States v. McGlory, 968 F.2d 309, 340 (3d Cir. 1992). In this case, Defendant has not provided any basis for concluding that he would be unduly prejudiced by a joint trial because of mutually antagonistic or irreconcilable defenses. See Sandini, 888 F.2d at 305.

Furthermore, the crimes alleged against Defendant are relatively distinct and a reasonable jury would be able to compartmentalize them in order to make an individualized determination of his guilt. See Eufrasio, 935 F.2d at 568 (ruling that the relevant inquiry is whether a reasonable jury could compartmentalize the evidence against each defendant); Sandini, 888 F.2d at 307; United States v. Inigo, 925 F.2d 641, 655-56 (3d Cir. 1991). Finally, there are sufficient alternative means available to this Court, including curative jury instructions, to alleviate concerns regarding spill-over. See Zafiro, 506 U.S. at 539 (noting that district court has discretion to tailor alternative remedies to severance). Therefore, because Defendant cannot identify a specific trial right that would be negatively impacted, because the charges against him can easily be compartmentalized by a reasonable jury, and because considerations of judicial economy weigh heavily in favor of a joint trial due to significant overlapping evidence, he has not met his burden of demonstrating that severance is necessary.

IV. Conclusion

For the foregoing reasons, the Court concludes that severance of Defendant is not necessary to ensure the fairness of his trial. An appropriate Order follows.

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ORDER

AND NOW, this 28th day of March, 2005, upon consideration of Defendant's Motion for Severance of Trial (docket no. 74), and the Government's response thereto, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.